

**Introduced by Senator Corbett**

February 22, 2013

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An act to amend Section 1773.1 of the Labor Code, relating to public works.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 776, as introduced, Corbett. Public works: prevailing wage rates: employer payment credits.

Existing law defines the term “public works” for purposes of requirements regarding the payment of prevailing wages, the regulation of working hours, and the securing of workers’ compensation for public works projects. Existing law further requires that, except as specified, not less than the general prevailing rate of per diem wages, determined by the Director of Industrial Relations as specified, be paid to workers employed on public works projects, and imposes misdemeanor penalties for certain violations of this requirement.

Under the law, employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages, except credit is not granted for benefits required under state or federal law. Employer payments include the rate of contribution made by the employer to a trustee or 3rd person pursuant to a plan, fund, or program, the rate of actual costs to the employer anticipated in providing benefits to workers pursuant to a specified enforceable commitment, and payments to the California Apprenticeship Council.

This bill would provide that an employer may take credit for those specified employer payments, even if those payments are not made during the same pay period for which credit is taken, if the employer regularly makes those payments on no less than a quarterly basis. This bill would prohibit credit from being granted for employer payments

made to monitor and enforce laws related to public works if those payments are not required by a collective bargaining agreement.

Existing law requires that credit for employer payments be computed on an annualized basis when the employer seeks credit for payments that are higher for public works projects than for private construction by that employer, with exceptions, including if the director determines that annualization would not serve a specified purpose.

This bill would prohibit that exception from applying to payments to a supplemental unemployment benefits plan or to a qualified cash or deferred arrangement, as described.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1773.1 of the Labor Code is amended to  
2     read:  
3     1773.1. (a) Per diem wages, ~~when~~ *as* the term is used in this  
4     chapter or in any other statute applicable to public works, ~~shall be~~  
5     ~~deemed to include~~ *includes* employer payments for the following:  
6     (1) Health and welfare.  
7     (2) Pension.  
8     (3) Vacation.  
9     (4) Travel.  
10    (5) Subsistence.  
11    (6) Apprenticeship or other training programs authorized by  
12    Section 3093, ~~so long as to the extent that~~ the cost of training is  
13    reasonably related to the amount of the contributions.  
14    (7) Worker protection and assistance programs or committees  
15    established under the federal Labor Management Cooperation Act  
16    of 1978 (Section 175a of Title 29 of the United States Code), to  
17    the extent that the activities of the programs or committees are  
18    directed to the monitoring and enforcement of laws related to  
19    public works.  
20    (8) Industry advancement and collective bargaining agreements  
21    administrative fees, provided that these payments are required  
22    under a collective bargaining agreement pertaining to the particular  
23    craft, classification, or type of work within the locality or the  
24    nearest labor market area at issue.

(9) Other purposes similar to those specified in paragraphs (1) to (8), inclusive.

(b) Employer payments include all of the following:

(1) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.

(2) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.

(3) Payments to the California Apprenticeship Council pursuant to Section 1777.5.

(c) Employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. However, ~~no~~ credit shall *not* be granted for benefits required to be provided by other state or federal law, *or for payments made to monitor and enforce laws related to public works if those payments are not made to a program or committee established under the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code)*. Credits for employer payments also shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing. However, an increased employer payment contribution that results in a lower hourly straight time or overtime wage shall not be considered a violation of the applicable prevailing wage determination ~~so long as~~ *if* all of following conditions are met:

(1) The increased employer payment is made pursuant to criteria set forth in a collective bargaining agreement.

(2) The basic hourly rate and increased employer payment are no less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the director's general prevailing wage determination.

(3) The employer payment contribution is irrevocable unless made in error.

*(d) An employer may take credit for an employer payment specified in subdivision (b), even if contributions are not made, or costs are not paid, during the same pay period for which credit is taken, if the employer regularly makes the contributions, or regularly pays the costs, for the plan, fund, or program on no less than a quarterly basis.*

(d)

1 (e) The credit for employer payments shall be computed on an  
2 annualized basis—~~where~~ *when* the employer seeks credit for  
3 employer payments that are higher for public works projects than  
4 for private construction performed by the same employer, ~~except~~  
5 ~~where~~ *unless* one or more of the following occur:

6 (1) The employer has an enforceable obligation to make the  
7 higher rate of payments on future private construction performed  
8 by the employer.

9 (2) The higher rate of payments is required by a project labor  
10 agreement.

11 (3) The payments are made to the California Apprenticeship  
12 Council pursuant to Section 1777.5.

13 (4) The director determines that annualization would not serve  
14 the purposes of this chapter. *This paragraph does not apply to*  
15 *employer payments made to a supplemental unemployment benefits*  
16 *plan or to a qualified cash or deferred arrangement, as described*  
17 *in Section 401(k) of Title 26 of the United States Code.*

18 ~~(e)~~

19 (f) (1) For the purpose of determining those per diem wages  
20 for contracts, the representative of any craft, classification, or type  
21 of worker needed to execute contracts shall file with the  
22 Department of Industrial Relations fully executed copies of the  
23 collective bargaining agreements for the particular craft,  
24 classification, or type of work involved. The collective bargaining  
25 agreements shall be filed after their execution and thereafter may  
26 be taken into consideration pursuant to Section 1773 whenever  
27 filed 30 days prior to the call for bids. If the collective bargaining  
28 agreement has not been formalized, a typescript of the final draft  
29 may be filed temporarily, accompanied by a statement under  
30 penalty of perjury as to its effective date.

31 (2) ~~Where~~ *When* a copy of the collective bargaining agreement  
32 has previously been filed, fully executed copies of all modifications  
33 and extensions of the agreement that affect per diem wages or  
34 holidays shall be filed.

35 (3) The failure to comply with filing requirements of this  
36 subdivision shall not be grounds for setting aside a prevailing wage  
37 determination if the information taken into consideration is correct.